

FILED
SUPREME COURT
STATE OF WASHINGTON
9/25/2018 3:52 PM
BY SUSAN L. CARLSON
CLERK

FILED
SUPREME COURT
STATE OF WASHINGTON
10/3/2018
BY SUSAN L. CARLSON
CLERK

Supreme Court No. 95062-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Cesar Beltran-Serrano

Appellant,

v.

City of Tacoma,

Respondent.

**AMICUS CURIAE BRIEF OF DISABILITY RIGHTS
WASHINGTON
IN SUPPORT OF APPELLANT**

Kimberly Mosolf, WSBA #49548
DISABILITY RIGHTS WASHINGTON
315 5th Avenue South, Suite 850
Seattle, Washington 98104
Telephone: (206) 324-1521
kimberlym@dr-wa.org

TABLE OF CONTENTS

I.	INTERESTS AND IDENTITY OF AMICUS CURIAE.....	1
II.	STATEMENT OF THE CASE.....	2
III.	ARGUMENT.....	2
IV.	CONCLUSION.....	9

TABLE OF AUTHORITIES

CASES

<i>Ostling v. City of Bainbridge Island</i> , 872 F. Supp. 2d 1117 (W.D. Wash. 2012).....	8
<i>Ostling v. City of Bainbridge Island</i> , No. 11-CV-5219 RBL, 2012 WL 4480550 (W.D. Wash. 2012).....	8

STATUTES

RCW 43.101.427	9
----------------------	---

OTHER AUTHORITIES

Amy C. Watson & Anjali J. Fulambarker, <i>The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners</i> , Best Pract. Mental Health, Dec. 2012	6
Daniel Beekman, Lewis Kamb, Steve Miletich, <i>Outraged crowd mourns shooting death of Charleena Lyles, rages against police brutality at community forum</i> , The Seattle Times, June 27, 2017, https://www.seattletimes.com/seattle-news/politics/family-of-charleena-lyles-unhappy-seattle-police-wont-participate-in-community-forum/	3
<i>Database of Fatal Police Shootings in the United States</i> , The Washington Post, https://www.washingtonpost.com/graphics/national/police-shootings-2017/ (last visited September 12, 2018)	4
National Institute of Mental Health, <i>Statistics: Mental Illness</i> (2017), https://www.nimh.nih.gov/health/statistics/mental-illness.shtml	4
Olivia Weitz, <i>Protester in Pasco Attend Vigil 7 Months After Police Shooting</i> , NW News Network, Sept. 10, 2015, http://www.nwnetwork.org/post/protesters-pasco-attend-vigil-7-months-after-police-shooting	3
Ruderman Family Foundation, <i>The Ruderman White Paper On Media Coverage Of Law Enforcement Use Of Force and Disability</i> (2016)	3
Steve Miletich, <i>Proposed deadly force initiative seeks more training, new standard for prosecuting Washington police</i> , The Seattle Times, July 6,	

2017, https://www.seattletimes.com/seattle-news/crime/proposed-deadly-force-initiative-seeks-more-training-new-standard-for-prosecuting-police/	3
U.S. Census Bureau, <i>Americans with Disabilities: 2010</i> (2012)	4
Wash. State Joint Legis. Task Force on the Use of Deadly Force in Community Policing, <i>Final Report to the Legislature and Governor</i> (2016)	5
Washington State Criminal Justice Training Commission, <i>Public Message on Crisis Intervention Training</i> (2017), https://fortress.wa.gov/cjtc/www/images/2017%20CIT%20Public%20Message.pdf	6

I. INTERESTS AND IDENTITY OF AMICUS CURIAE

Amicus Disability Rights Washington is the organization designated by federal law and the Governor of Washington to provide protection and advocacy services to people in Washington with mental, developmental, physical, and sensory disabilities. Disability Rights Washington has a Congressional mandate to advocate on behalf of people with disabilities through the provision of a full range of legal assistance including legal representation, regulatory and legislative advocacy, and education and training.

Because of the high percentage of people with disabilities involved in the criminal justice system, Disability Rights Washington created a program dedicated to protecting the rights of people with disabilities experiencing arrest and incarceration. This program is called AVID, which stands for Amplifying Voices of Inmates with Disabilities. AVID has extensive experience representing the interests of people with a variety of disabilities and fields hundreds of calls and letters annually from individuals with legal problems related to their disabilities. AVID also works on the impact of arrest and police use of force against people with disabilities.

Disability Rights Washington was a member of the 2016 Joint Legislative Task Force on the Use of Deadly Force in Community

Policing, which was established to recommend best practices to reduce the number of violent interactions between law enforcement officers and members of the public. Disability Rights Washington is also a current member of the Leadership Team of De-escalate Washington, a coalition of individuals and community organizations working to pass Initiative 940 in Washington State. Among other things, Initiative 940 requires law enforcement officers in Washington to receive violence de-escalation and mental health training.

II. STATEMENT OF THE CASE

Amicus Disability Rights Washington joins generally in Appellant's Statement of the Case.

III. ARGUMENT

Disability Rights Washington agrees that public policy supports confirmation by this Court of a duty of care in negligence on the part of government and its law enforcement officers with regard to unreasonable use of deadly force against civilians. Incidents of police use of force have increasingly served as a catalyst for marginalized communities in Washington State—including people with disabilities—to organize and bring attention to this issue. *See, e.g.,* Steve Miletich, *Proposed deadly force initiative seeks more training, new standard for prosecuting Washington police*, The Seattle Times, July 6, 2017,

<https://www.seattletimes.com/seattle-news/crime/proposed-deadly-force-initiative-seeks-more-training-new-standard-for-prosecuting-police/>;
Daniel Beekman, Lewis Kamb, Steve Miletich, *Outraged crowd mourns shooting death of Charleena Lyles, rages against police brutality at community forum*, The Seattle Times, June 27, 2017,
<https://www.seattletimes.com/seattle-news/politics/family-of-charleena-lyles-unhappy-seattle-police-wont-participate-in-community-forum/>;
Olivia Weitz, *Protester in Pasco Attend Vigil 7 Months After Police Shooting*, NW News Network, Sept. 10, 2015,
<http://www.nwnewsnetwork.org/post/protesters-pasco-attend-vigil-7-months-after-police-shooting>.

People with disabilities experience the use of force by law enforcement at disproportionately high rates. Between one third and one half of all use of force incidents by law enforcement involve a civilian with a disability of any kind. See Ruderman Family Foundation, *The Ruderman White Paper On Media Coverage Of Law Enforcement Use Of Force and Disability*, 7 (2016). As comparison, approximately 20 percent of people in the United States have a disability; approximately 13 percent have a severe disability. U.S. Census Bureau, *Americans with Disabilities*:

2010 (2012). The Washington Post¹, which maintains an online database of people shot and killed by the police, found that in both 2016 and 2017 approximately one quarter of those killed by police nationally showed signs of mental illness. *Database of Fatal Police Shootings in the United States*, The Washington Post, <https://www.washingtonpost.com/graphics/national/police-shootings-2017/> (last visited September 12, 2018). The rate is closer to one third for Washington State. *Id.* As comparison, only about four percent of people in the United States have a serious mental illness. National Institute of Mental Health, *Statistics: Mental Illness* (2017), <https://www.nimh.nih.gov/health/statistics/mental-illness.shtml>.

Disability Rights Washington has worked actively over the past several years to respond to our constituents' concerns about incidents of police violence. Through our work providing outreach and technical assistance, people with disabilities regularly express to us that they want police officers held accountable when their actions are unreasonable, especially in cases involving the use of force. They have emphasized to us the importance of learning from these incidents and avoiding them in the future. Confirmation of a duty of care in negligence to refrain from the

¹ Because law enforcement is not generally required to report how they use force, we rely on journalists and some state agencies to generate data.

unreasonable employment of lethal force by law enforcement will help achieve these goals for people with disabilities.

The extent of public concern about police use of force has been recognized by the Washington State Legislature. In 2016, the Washington State Legislature established the Joint Legislative Task Force on the Use of Deadly Force in Community Policing, which included members of law enforcement and community advocates, including Disability Rights Washington. SHB 2908, Laws of 2016, ch. 200, §2. The Task Force made recommendations to the Legislature and Governor on best practices to reduce the number of violent interactions between law enforcement officers and members of the public. Wash. State Joint Legis. Task Force on the Use of Deadly Force in Community Policing, *Final Report to the Legislature and Governor* (2016). These included enhanced training for law enforcement on de-escalation skills and safely interacting with people with disabilities and behavioral health issues. *Id.* at 15, Recommendation 6.

Law enforcement training has become a major focus of efforts to improve the outcomes of interactions between law enforcement and people with mental illness. Nationally and in Washington State, the main training model used to achieve better outcomes is Crisis Intervention

Team (CIT) training.² See Amy C. Watson & Anjali J. Fulambarker, *The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners*, Best Pract. Mental Health, Dec. 2012, at 71. The purpose of CIT training is not only to familiarize officers with the signs and symptoms of mental illness, but also to train officers in de-escalation techniques and in assessing the appropriateness of referral for mental health evaluation and services. *Id.*

The Washington State Criminal Justice Training Commission (CJTC), which provides basic training for all law enforcement officers in Washington State, provides the CIT training model “as a form of community policing to improve public safety responses to individuals experiencing a behavioral health crisis.”³ Washington State Criminal Justice Training Commission, *Public Message on Crisis Intervention Training* (2017), <https://fortress.wa.gov/cjtc/www/images/2017%20CIT%20Public%20Message.pdf>. Among other things, this training is meant to help officers to

² “CIT is an organizational and community intervention that involves changes in police department procedures as well as collaboration with mental health providers and other community stakeholders. According to the model, officers volunteer to receive 40 hours of training provided by mental health clinicians, consumer and family advocates, and police trainers.” Watson & Fulambarker, *supra*.

³ Currently, Washington State law requires that officers receive eight hours of CIT training as part of basic training. RCW 43.101.427. The CJTC offers a 40-hour CIT course and is required to make efforts to provide this enhanced training to at least 25 percent of officers. *Id.*

identify when their community caretaker function is an appropriate approach to a civilian who may be demonstrating behaviors indicative of mental health crisis. In turn, this can help avoid unnecessary escalation and potential unreasonable use of force.

Officer Volk approached Mr. Beltran-Serrano ostensibly as part of her community caretaker function, responding to his bizarre behavior and seeking to advise him on panhandling laws. *See* Brief of App. at 2-3, Brief of Resp. at 2. She did not believe she had reasonable suspicion or probable cause that he was committing a crime. *Id.* Officer Volk may have drawn upon CIT or other training to avoid unnecessary harm to a member of the public whom she did not suspect of committing a crime, but who was clearly experiencing some kind of behavioral health crisis. Instead of shooting Mr. Beltran-Serrano, perhaps Officer Volk could have resolved this incident by a referral for mental health evaluation and services.

Whether a law enforcement officer received CIT or other similar training, the substance of that training, and to what extent an officer deviated from that training when using force against someone with mental illness is a question of public importance. The public should be made aware when relevant training has not been delivered or followed correctly. Confirmation of a duty of care in negligence will aid in the examination

and improvement of law enforcement training regarding people with mental illness and other disabilities.

A tragic police shooting that occurred on Bainbridge Island in 2010 demonstrates the importance of assessing officer training and behavior, and how transformative it can be for a municipality to be held accountable when training is insufficient. On October 26, 2010, officers responded to the home of Douglas Ostling. The officers knew that Mr. Ostling had serious mental illness, but escalated the situation unnecessarily. *Ostling v. City of Bainbridge Island*, No. 11-CV-5219 RBL, 2012 WL 4480550, at *1-2 (W.D. Wash. 2012). The officers shot Mr. Ostling through a door and killed him. *Id.* Notably, the officers' failure to retreat, wait for back-up, or generally follow department protocol was similar to that demonstrated by Officer Volk.


Mr. Ostling's family was allowed to move forward on a claim pursuant to 42 U.S.C. § 1983 alleging the officers used excessive force and that the City of Bainbridge Island failed to train its officers to effectively interact with people with mental illness. *Ostling v. City of Bainbridge Island*, 872 F. Supp. 2d 1117, 1128-31 (W.D. Wash. 2012). A jury concluded that the City failed to provide adequate training to officers and that this led to unnecessary confrontation and use of deadly force by the officers. *Ostling*, 2012 WL 4480550, at *9-10. In response to this

case, which brought public scrutiny and assigned liability to the City for poor training, Washington State passed The Douglas M. Ostling Act in 2015. This law requires all state law enforcement officers to receive CIT training as part of the basic training academy and annual refresher training. RCW 43.101.427.

IV. CONCLUSION

Disability Rights Washington respectfully asks this Court to adopt the proposed duty in negligence, recognizing its powerful deterrent effect, and to reverse the decision of the trial court.

Respectfully submitted this 25th day of September, 2018



Kimberly Mosolf, WSBA #49548
DISABILITY RIGHTS WASHINGTON

DISABILITY RIGHTS WASHINGTON

September 25, 2018 - 3:52 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 95062-8
Appellate Court Case Title: Cesar Beltran-Serrano v. City of Tacoma
Superior Court Case Number: 15-2-11618-1

The following documents have been uploaded:

- 950628_Affidavit_Declaration_20180925154827SC749917_4424.pdf
This File Contains:
Affidavit/Declaration - Other
The Original File Name was Beltran Amicus Stroh Declaration.pdf
- 950628_Briefs_20180925154827SC749917_2765.pdf
This File Contains:
Briefs - Amicus Curiae
The Original File Name was Beltran Amicus Brief.pdf
- 950628_Motion_20180925154827SC749917_6699.pdf
This File Contains:
Motion 1 - Amicus Curiae Brief
The Original File Name was Beltran Amicus motion.pdf

A copy of the uploaded files will be sent to:

- andrienne@washingtonappeals.com
- bmarvin@connelly-law.com
- cate@washingtonappeals.com
- dan.lloyd@cityofvancouver.us
- deborah.hartsoch@cityofvancouver.us
- jconnelly@connelly-law.com
- jhoman@cityoftacoma.org
- jon@pfrwa.com
- kimberlym@dr-wa.org
- matt@tal-fitzlaw.com
- mlebank@connelly-law.com
- monar@dr-wa.org
- phil@tal-fitzlaw.com
- sblack@cityoftacoma.org

Comments:

Sender Name: Mona Rennie - Email: monar@dr-wa.org

Filing on Behalf of: Kimberly Ann Mosolf - Email: kimberlym@dr-wa.org (Alternate Email:)

Address:

315 5th Avenue South, #805

Seattle, WA, 98104

Phone: (206) 324-1521 EXT 215

Note: The Filing Id is 20180925154827SC749917